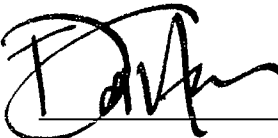


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number: 11910-0003001
<p>I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.</p> <p>_____</p> <p>Date of Deposit</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Typed or Printed Name of Person Signing Certificate</p>	Application Number 09/836,484	Filed April 17, 2001
	First Named Inventor Lisette Cooper et al.	
	Art Unit 3695	Examiner Siegfried Chencinski
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record <u>30,378</u> (Reg. No.)</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: center;">  <p>_____ Signature</p> <p>_____ David L. Feigenbaum Typed or printed name</p> <p>_____ (617) 542-5070 Telephone number</p> <p>_____ December 3, 2008 Date</p> </div> </div> <p style="font-size: small; margin-top: 20px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below'.</p>		
<input checked="" type="checkbox"/> Total of <u> </u> forms are submitted.		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Lisette Cooper et al. Art Unit : 3695
 Serial No. : 09/836,484 Examiner : Siegfried Chencinski
 Filed : April 17, 2001 Conf. No. : 8521
 Title : VISUALIZATION OF ASSET INFORMATION

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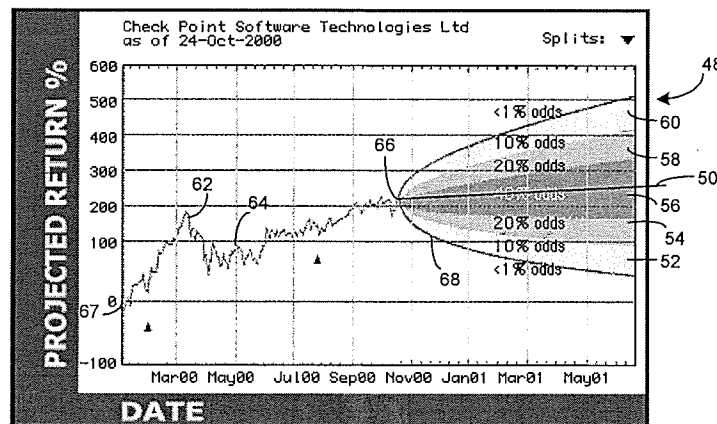
Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The examiner's rejections—based on a combination of Gatto, alleged applicant-disclosed prior art (AAPA), Official Notice, Microsoft Excel® 5 Training Book (Excel), and Jones(6,021,397)—are wrong, because they rely on conclusory statements, do not support a legal conclusion of obviousness, and are inconsistent with the examiner's repeated recognition that “none of Gatto, Jones, Makivic [U.S. patent 6,061,662], Official Notice, AAPA, Morningstar.com, E*Trade or Excel explicitly describe the exact method” recited in the applicant's rejected claims.

In the applicant's claims, stripes are displayed to enable a user to visualize easily the odds that a future performance of an asset (such as the return on shares in a corporation) will be within certain ranges over time.

In one example (figure 2, below), actual past returns of a stock are displayed on a



single line 62 that begins at a reference date 67 (January 1, 2000) and ends at a current date 66.

Future returns, however, are only predicted and the predictions are illustrated using a set of colored stripes 52, 54, 56, 58, and 60 that show the odds (as percentages) of various future return percentages over time. On May 1, 2001, a given stripe 52, for example, shows that a range of returns between 50% and 100% (relative to the reference date 67) is associated with odds of 10%.

To a casual viewer, it may appear that the shape of each stripe, as defined by its boundaries, is predetermined and simply imposed on the graph and that each projected return at a given time simply lies within whatever predefined stripe it happens to fall. That is not the case. Instead, the boundary of each stripe is determined by calculation from the projected returns, not vice versa. Accordingly the boundaries of the stripes may have contours that are irregular, for example, or do not conform to standard parabolic or other mathematical curve forms.

Significantly, then, the contour of the boundary of each stripe is not arbitrary and not pre-defined. To the contrary, the boundary of each stripe varies in a way that is not predetermined and is useful in enabling the user to visualize easily the expected odds over time of various predicted return percentages.

This important feature is recited in the clause of claim 14 highlighted below:

14. *A method for use in a visualization system comprising the steps of:
generating data representing at least one stripe indicating a range of odds
of a performance measure having indicated values at a succession of times, the
range of odds being based on a probability density function of the performance
measure, computed from a second derivative of an option price function, for each
of the succession of times,
a contour of a boundary of each stripe varying, for each of the
succession of times, according to variations in the odds of the performance
measure being within the range of values indicated by the stripe, as determined
by the probability density function, and
displaying the stripes in the visualization system.*

Not one reference cited by the examiner described this feature, as the examiner has five times acknowledged:

none of Gatto, Jones, Makivic, Official Notice, AAPA, Morningstar.com, ETrade or Excel explicitly disclose the exact method for use in a visualization system comprising ... a contour of a boundary of each stripe varying, for each of the succession of times varying according to variations in the odds of the performance measure being within the range of values indicated by the stripe ...

(emphasis added, page 2 of the August 4, 2008, action)

Yet, despite an absence of this feature in the references cited, the examiner concludes the claim would have been obvious, apparently on the theory that, because “computer automated graphic displays of quantitative data displays of various algorithms were in widespread use in the financial securities industry,” the “ordinary practitioner of the art would ... have known that off the shelf and custom softwares were capable of all of the graphic display features in Applicant's invention.” (pages 5-6, August 4, 2008, action).

The applicant disagrees. It doesn't matter whether a person of skill would have known that available software was capable of a feature. One might contend that general purpose graphical software was capable of producing an endless variety of graphical features at the time the application was filed. But this would be irrelevant. Only with the benefit of the applicant's invention as a roadmap to which visualization features would be useful and how to produce them would any person of skill have known how to reach the applicant's invention with its varying stripe contours. Such hindsight reasoning is impermissible.

If the examiner's logic were viable, it would enable one to conclude (illogically) that the United States Constitution was old and known at the time it was written merely because the quill, ink, and parchment used to create it were capable of allowing the framers to write it.

The examiner argues (incorrectly) that:

[t]he invention remains one of displaying data in graphical forms which were well known in the prior art at the time of Applicant's invention. It matters not how simple or complex the algorithms are whose numeric results are being displayed in graphic form (emphasis added, page 6, August 4, 2008, action).

Although “displaying data in graphical forms,” in general, may have been known, it is clear that the boundary contour feature of claim 14 was not known to anyone except the applicant.

The examiner concludes that “an ordinary practitioner of the art at the time of Applicant's invention would have found it as obvious to have combined the disclosures” to produce the claimed method (page 7, August 4, 2008, action). Yet the examiner reaches this conclusion without ever establishing one of the most basic requirements of a *prima facie* case of obviousness: the actual existence of each element in the prior art.

The examiner alleges that there would have been motivation to combine the references, because of “the desire to provide users with improved tools for effectively viewing historical estimates, analytical projections and recommendations regarding financial assets such as securities” (page 7, August 4, 2008, action). But this is nothing more than a motivation to improve the art—a vague motivation that always exists—and not a motivation to make the improvement recited in claim 14.

The notice of appeal fee and the petition for extension of time fee are being paid on the electronic filing system. Please apply any other charges or credits to deposit account 06-1050, referencing attorney docket 11910-0003001.

Respectfully submitted,

Date: _____

12/3/8



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